

Appendix I

30(b)(6) Transcripts

Goddard, Alson	1
Ospino, Madeleine	24
Pestana, Georgia	40

1
2 UNITED STATES DISTRICT COURT

3 SOUTHER DISTRICT OF NEW YORK

4 Civil Action No. 1:16-cv-03445-RA-RLE

5 -----x

6 JEROME ADAMS, MARGARET CHERRY, MICHELLE

7 HACKETT and JUAN TARONJI, et al.,

8 Plaintiffs,

9
10 - against -

11
12 CITY OF NEW YORK, NY,

13 Defendants.

14 -----x

15 August 2, 2018

16 9:44 a.m.

17
18 EXAMINATION BEFORE TRIAL of the
19 Defendant, By, ALSON GODDARD, pursuant to Notice,
20 held at the offices of Spivak Lipton, LLP, 1700
21 Broadway, New York, New York 10019 before Mandy
22 Fein, a Notary Public of the State of New York.
23
24
25

1 GODDARD

2 (Exhibit handed to witness.)

3 A The first paragraph?

4 Q The first three paragraphs, the first
5 section.

6 A Okay.

7 Q Does that appear to be a general
8 description of the duties and responsibilities
9 for the Associate Fraud Investigator?

10 A Yes, within HRA with the exception of
11 Paragraph 2 because that is specific to the
12 Department Of Finance.

13 Q That is not -- the Fraud
14 Investigators and Associate Fraud
15 Investigators that we are talking about today
16 are not in The Department Of Finance, correct?

17 A No.

18 Q Does that appear accurate?

19 A Yes.

20 Q Under the very first -- after that
21 section, there is Assignment Level 1. Would
22 that be the Associate Fraud Investigator 1?

23 A Yes.

24 Q And this says, under direction with
25 considerable latitude for individual action or

1 GODDARD

2 may have assignments that maybe a little more
3 challenging, so -- and also BV, Bureau Of
4 Fraud Investigation, they do perform duties in
5 the absence of the supervisor, so they are
6 allowed to review cases in the absence of the
7 supervisor. If the unit supervisor is absent,
8 they can review the cases and actually sign
9 off on them.

10 Q But day in day out their jobs are
11 pretty similar?

12 A Yes.

13 Q And if they had assigning, and I
14 don't know exactly how it works, if they are
15 assigning cases out and everyone is getting
16 ten new cases, there may be a decision like
17 oh, this one is pretty complicated, let's give
18 it to John Smith because they've been doing
19 this for four or five years?

20 A Right.

21 Q Rather than the brand new hire?

22 A Yes.

23 Q Who would be a Fraud Investigator 1
24 and someone with more experience would be a
25 Fraud Investigator 2?

1 GODDARD

2 document on the first page it says what the
3 job involves. Could I have you just read that
4 section all the way down to where it begins
5 the salary, do you see that next section?

6 A Yeah.

7 Q If you could read that top section
8 and let me know if there is anything that you
9 believe is not accurate.

10 A Yeah. Everything is typical with the
11 exception what is related to The Department Of
12 Finance.

13 Q To become a Fraud Investigator at
14 HRA, are you required to take an exam?

15 A Yes.

16 Q Can somebody not working as a Fraud
17 Investigator, can they take the exam to get a
18 position as an Associate Fraud Investigator?

19 MS. SAINT FORT: Objection to form.

20 A Associate Fraud Investigator is a
21 promotional exam, so they would typically have
22 to be in the position of Fraud 1 or 2.

23 Q So, someone from the outside working
24 somewhere else couldn't apply directly to an
25 Associate Fraud Investigator?

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GODDARD

Examination for a promotion to Associate Fraud Investigator, correct?

A That's correct.

Q Same dates as the previous document, March 2nd, 2016 to March 22nd, 2016, correct?

A That's correct.

Q Could I have you read that section what the job involves and then let me know if there is anything in it that you believe is inaccurate?

A It is accurate as it relates to Social Service benefits.

Q For employees who want to promote to an Associate Fraud Investigator they are required to take a test as well?

A That's correct. You can be provisionally appointed to an Associate -- Associate Fraud Investigator 1. This usually occurs if there is the need -- if the agency need to have a supervisory level and there is no existing exams or an existing hiring list from an exam.

Q Is that rare?

A It's -- it's less rare now, not

1 GODDARD

2 MS. SAINT FORT: Objection to form.

3 A Generally HRA mission is really to
4 ensure that there is integrity in the public
5 assistance program. So, for example, our duty
6 is to ensure that the people who are eligible
7 are able to have the benefits and those are
8 not eligible, to keep them off.

9 Q Would you agree that for the Fraud
10 Investigators and the Associate Fraud
11 Investigators, regardless of their job
12 assignment, that their primary job duty is to
13 further that mission?

14 A That's correct.

15 MR. RICKSECKER: I will tell you
16 what, we have been at this a little over an
17 hour, let's take a little break, like five
18 minutes, go to the restroom or anything like
19 that and then we can continue.

20 MS. SAINT FORT: Okay.

21 (RECESS)

22 Q Do you know generally what schedules
23 the Fraud Investigators work?

24 MS. SAINT FORT: Objection to form.

25 A Typically, I would say, like a nine

1 GODDARD

2 to five, but they are shift -- you could also
3 have ten to six, but generally, it is business
4 hours.

5 Q Typically Monday through Friday?

6 A Yes.

7 Q Same with Associate Fraud

8 Investigators?

9 A Yes.

10 Q When you say they work typically nine
11 to five or some variation during business
12 hours, do they work an eight hour shift?

13 A Seven hours, one hour duty free.

14 Q When you say one hour duty free, is
15 it like a duty free meal period?

16 A Yes.

17 Q Do you know what flex time is?

18 A Yes.

19 Q What is flex time?

20 A So, flex time is where you have at
21 least an hour between your start time. So,
22 for example, you could have a typical schedule
23 that's, say, 8:30, 9:30. As long as you
24 arrive within that flex period, you are
25 considered to be on time.

1 GODDARD

2 Goddard 8.

3 (Document marked as Goddard Exhibit 8
4 for Identification, as of this date.)

5 Q This document is titled Code Of
6 Conduct For HRA Employee.

7 Are you familiar with this document?
8 (Exhibit handed to witness.)

9 A Very familiar.

10 Q How are you familiar with this
11 document?

12 A This document is given to everyone
13 when you initially come into the agency and is
14 always available to you on the intranet.

15 Q This is dated January 15th, 2010,
16 correct?

17 A Yes.

18 Q Do you know if this is still in
19 effect?

20 A I'm not sure about the date because I
21 know there has been revision and they usually
22 have revision after we get new commissioners,
23 so I can't say specifically if this one is
24 currently in effect.

25 Q If there was a newer version of it,

1 GODDARD

2 would it show that it was revised, amended or
3 have a new date, or something on there?

4 MS. SAINT FORT: Objection to form.

5 A Yes. Normally at the top it would
6 indicate the revision date.

7 Q So, if there was a newer version
8 there would be a more recent date?

9 A Yes.

10 Q Do you have any reason to believe
11 this document is not the current document?

12 A Well, because the commissioner is no
13 longer Robert Dole, so it is possible it might
14 have been updated since.

15 Q Do you recall seeing a more recent
16 version?

17 A I can't recall.

18 Q Does this code of conduct for HRA
19 employees apply to Fraud Investigators 1 or 2?

20 A Yes.

21 Q How about Associate Fraud
22 Investigator 1's?

23 A Yes.

24 Q Does it apply to the supervisors as
25 well?

1 GODDARD

2 A Yes.

3 Q If I could have you flip forward to
4 Page 3. The following standards of conduct
5 are being established to inform employees of
6 the conduct that is expected in performing
7 their duties as employees of HRA/DSS, correct?

8 A Correct.

9 Q And the Fraud Investigators and the
10 Associate Fraud Investigators are employees of
11 HRA -- DSS, correct?

12 MS. SAINT FORT: Objection to form.

13 A Correct.

14 Q You stated that this document is
15 provided to HRA employees when they are first
16 hired?

17 A That's correct.

18 Q How are new versions or revised
19 versions provided to the employees?

20 A We usually get email updates with the
21 link to the new procedure.

22 Q Do you know who sends those emails?

23 A Yeah. We have a specific procedure
24 division. If it is something related to time
25 and leave or any issue, it can probably come

1 GODDARD

2 out from ACM, which is our, so called, payroll
3 department.

4 Q How about like standard of conduct,
5 code of conduct?

6 A Yeah. We have a specific procedure
7 department that issues these.

8 Q If I could -- looking at Page 3,
9 there is a standards of conduct and then there
10 is a numeric listing of various standards.
11 Number 12 states that employees shall not
12 engage in any non-agency activity during
13 working hours nor use any agency premises to
14 conduct non-agency matters, correct?

15 A That's correct.

16 Q Number 13 refers to excessive use of
17 personal cell phones; is that correct?

18 A Yes.

19 Q And Number 21, you can take a look at
20 it, begins, employee shall obey all
21 regulations and orders of their supervisors.
22 You can take a look at that and let me know if
23 you believe that is accurate or correct
24 standard of conduct.

25 A That is correct.

1 GODDARD

2 Q Number 22, you can read it, but it
3 basically says that each employee is to
4 perform all duties imposed by law and by the
5 employees task and standards; is that correct?

6 A That's correct.

7 Q They are expected to carry out their
8 work assignments given to them as accurately
9 and efficiently as possible?

10 A That's correct.

11 Q At the end of that section on Page 7
12 there is in bold states that violations of the
13 standards of conduct shall constitute
14 misconduct and/or incompetence and may result
15 in the initiation of disciplinary action; is
16 that correct?

17 A That's correct.

18 Q So, Fraud Investigator or Associate
19 Fraud Investigator could be subject to
20 discipline if they did not follow these
21 standards of conduct?

22 A That's correct, actually, everyone.

23 Q Everyone in HRA?

24 A Yes.

25 Q It also states that these standards

1 GODDARD

2 A That is the revision date.

3 Q So, this was revised in October 2007?

4 A That is correct.

5 Q We went over a Fraud Investigator 1
6 and a Fraud Investigator 2 performance
7 evaluation with the exception of the, maybe,
8 the actual task and standards that an employee
9 is being evaluated on. You testified that
10 there is not really a difference between how
11 the evaluations are performed for a Fraud
12 Investigator 1 compared to a Fraud
13 Investigator 2, correct?

14 A Correct.

15 Q Is there anything different about how
16 an Associate Fraud Investigator 1 is evaluated
17 with the exception that the task and standards
18 may be different?

19 A No, same.

20 Q Same process?

21 A Same process.

22 Q From the master list?

23 A Yes. Based on program needs.

24 Q If I could have you take a look at
25 Page 2 of this performance evaluation task,

1 GODDARD

2 A It is just a system that we use to
3 record our time.

4 Q Is the purpose of City Time at HRA to
5 accurately record an employee's work time?

6 A Yes.

7 Q That is true for Fraud Investigators
8 and Associate Fraud Investigators?

9 A Yes.

10 Q Are the are Fraud Investigators and
11 Associate Fraud Investigators supposed to
12 enter their time in the City Time when they
13 arrive at the work site?

14 A Well, there's two ways to access City
15 Time. You can hand scan, which means, when
16 you get off, you know, when you get on your
17 floor, your designated floor, you can actually
18 hand scan and that clocks you in or you can
19 actually go to your desk and web in, they call
20 it web clock.

21 Q And so, are you -- are Fraud
22 Investigators and Associate Investigators
23 expected to either scan in or use the web
24 clock on their computer when they first arrive
25 at the work site?

1 GODDARD

2 A All overtime has to be preauthorized.

3 Q And the next sentence says, to ensure
4 accurate time keeping it is essentially that
5 all overtime be entered into City Time,
6 approved by the immediate supervisor and
7 approved by the senior approver; is that
8 correct?

9 A Where are you reading that from?

10 Q The third paragraph, it is the second
11 sentence, it begins to ensure accurate time
12 keeping.

13 A That's correct.

14 Q And again, you testified earlier that
15 accurate time keeping, the system used to keep
16 accurate time keeping is City Time, correct?

17 A That's correct.

18 Q It also states in that very first
19 sentence, it says, all pay overtime must be
20 preauthorized?

21 A Yes.

22 Q Is there any unpaid overtime?

23 A Yes. You could have overtime for
24 comp for time verses pay.

25 Q So, you are describing compensatory

1 GODDARD

2 time where you may work over your scheduled
3 shift but instead of getting cash payment you
4 get leave?

5 A Right.

6 Q Comp time?

7 A Right.

8 Q Is there any other type of overtime
9 that is unpaid?

10 A No.

11 Q What if someone works outside their
12 shift without preauthorization?

13 A They're not paid.

14 Q And the very last sentence here in
15 this section states that any work performed
16 before or after regularly scheduled work hours
17 must be entered and approved in accordance
18 with agency policy; is that correct?

19 A That's correct.

20 Q Do you know what the process is for a
21 Fraud Investigator or Associate Fraud
22 Investigator to get preauthorization for
23 overtime?

24 A They just basically request overtime
25 to their supervisor or the supervisor may ask

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GODDARD

Have you seen this document?

(Exhibit handed to witness.)

A City Time reference guide, if my memory serves me, came out when City Time was instituted.

Q On Page 3 underneath there is like kind of a box in the middle, underneath that there is a bullet point that says, click on self-paced training.

Do you see that?

A Yes.

Q Do you know what self-paced training is?

A That's an on-line training.

Q So, this is, perhaps, a training on-line where you click through a series of, I guess, slides or whatever and to complete the training?

A Yeah.

Q Do you know if this document is provided to all Fraud Investigators and Associate Fraud Investigators at HRA?

A Like I see -- I remember this, but this is like I believe when City Time was

1 GODDARD

2 initially introduced. I don't know if this
3 document is currently available.

4 Q Do you know how Fraud Investigators
5 and Associate Fraud Investigators indicate
6 that they have taken a duty free meal period?

7 MS. SAINT FORT: Objection.

8 A Say that again.

9 Q Do you know how Fraud Investigators
10 and Associate Fraud Investigators indicate
11 that they have taken a duty free meal period?

12 A Okay. So, there is no way in City
13 Time that they actually do this, but each
14 supervisor and each unit they have what we
15 call a lunch schedule and that is done by
16 program area depending on your need, so, for
17 example, if I'm the supervisor and have six
18 investigators, I won't send all six at twelve.
19 Depending on my need, I may send three at
20 twelve and then the other three at one. So,
21 the supervisor actually track that, not
22 necessarily the investigator enter in City
23 Time.

24 Q The supervisor tracks when staff are
25 taking their meals?

1 GODDARD

2 A Right.

3 Q And do they -- is the hour for the
4 meal period automatically deducted by City
5 Time?

6 A Yeah. The way it is set up is that
7 you work eight hours and one hour is duty
8 free.

9 Q So we are clear, the Fraud
10 Investigators or Associate Fraud Investigators
11 don't swipe in or out for meal periods,
12 correct?

13 A No, they don't.

14 Q They don't manually type in when they
15 took their meal period; is that correct?

16 A In City Time, no.

17 Q As part of the program or part of the
18 system that this is your scheduled shift and
19 everyday you work you get deducted one hour
20 for the meal period, correct?

21 MS. SAINT FORT: Objection.

22 A That's correct.

23 MR. RICKSECKER: Please mark this
24 Goddard 19.

25 (Document marked as Goddard Exhibit 19

1 GODDARD

2 dispursed via email in an email blast or
3 something like that?

4 A Yes. It comes out pretty much to all
5 staff. They have a list and it comes out the
6 list.

7 Q Do you know do some HRA bulletins go
8 just to supervisors and other bulletins go to
9 all staff or do they all go to all staff?

10 A If it is a policy related to time and
11 leave, it will go to all staff.

12 Q For example, this one would go to all
13 staff; is that correct?

14 A Yes.

15 Q Feel free to take a look at this, but
16 we have already discussed a lot of this, but
17 some of the duties of a supervisor related to
18 ensuring accurate time and leave for their
19 staff include a process to certify and submit
20 time sheets for an employee on their behalf if
21 they are out, correct?

22 A That is correct, is that part of this
23 bulletin?

24 Q Yes, it is, but we have already
25 talked about a lot of this.

1 GODDARD

2 City Time human resources business partner
3 handbook.

4 Have you seen this?

5 (Exhibit handed to witness.)

6 A No.

7 Q Is it safe to say that Fraud
8 Investigators are not approvers for anyone in
9 City Time?

10 A Fraud Investigator 1?

11 Q Yes.

12 A Yes.

13 Q What about Fraud Investigator 2,
14 would they be City Time approvers?

15 A No.

16 Q What about Associate Fraud
17 Investigator 1's?

18 A Yes.

19 Q They can be?

20 A Yes.

21 Q Not always?

22 A Right. It depends because I have
23 Associate Fraud Investigator 1 who are not
24 functioning in a supervisor, therefore, have
25 no City Time authorization authority.

1 GODDARD

2 Associate Fraud Investigator's hours of work.
3 Do you know if there has been any changes
4 regarding those method since May of 2013?

5 A That is kind of general in terms
6 of -- in terms of -- explain that a little
7 better.

8 Q Sure. So, we have talked about ways
9 that employees are supposed to be tracking
10 their time, correct, scanning in, using the
11 City Time procedures and then you talked about
12 the method if they are unable to scan out if
13 they are out in the field or something like
14 that, right?

15 A Correct.

16 Q Generally, those are kind of
17 generally the method used right by Fraud
18 Investigators and Associate Fraud
19 Investigators to track their time, correct?

20 A Correct.

21 Q Are you aware of any changes since
22 May 2013 to those method?

23 A No.

24 Q We have also talked about the method
25 used by Fraud Investigators and Associate

1 GODDARD

2 you know, in an event you are out there and
3 you are going over your call, here is the
4 process, you need to call your supervisor.
5 So, that might not be listed were for word in
6 the actual time and leave procedure, but the
7 program area may have specific instruction to
8 the fraud investigators as to how to proceed.

9 Q And do those specific instructions in
10 terms of how to proceed, does that alter or
11 change the general time and leave policy of
12 HR?

13 A No. It's really -- it's working with
14 that procedure and then based on the need of
15 the program area.

16 Q That's all.

17 MR. RICKSECKER: I have a few more.

18 BY

19 MR. RICKSECKER:

20 Q Mr. Goddard, I do have a few
21 questions to follow up on some of that.

22 You were asked about in a situation
23 if an employee came in early before their
24 shift, if you as a supervisor saw or if a
25 supervisor saw a Fraud Investigator or an

1
2 UNITED STATES DISTRICT COURT

3 SOUTHER DISTRICT OF NEW YORK

4 Civil Action No. 1:16-cv-03445-RA-RLE

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6 JEROME ADAMS, MARGARET CHERRY, MICHELLE

7 HACKETT and JUAN TARONJI, et al.,

8 Plaintiffs,

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10 - against -

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12 CITY OF NEW YORK, NY,

13 Defendants.

14 -----x

15 June 19, 2018

16 9:37 a.m.

17
18 EXAMINATION BEFORE TRIAL of the
19 Defendant, By, MADELEINE OSPINO, pursuant to
20 Notice, held at the offices of Spivak Lipton,
21 LLP, 1700 Broadway, New York, New York 10019
22 before Mandy Fein, a Notary Public of the State
23 of New York.
24
25

1 OSPINO

2 we give training in general. It is not that
3 we have any specific training directed to this
4 specific topic, we just give general training.

5 Q If I understand correctly, you give
6 general training and part of that training may
7 cover this topic?

8 A May cover -- not specifically the
9 title of FLSA, just overtime, how to approve
10 time sheets, you know, that overtime has to be
11 approved between certain limit of time, things
12 like that, not specifically, you know,
13 mentioning as a topic.

14 Q And the topic of the Fair Labor
15 Standards Act, you mentioned FLSA for the
16 court reporter, is that what you are referring
17 to?

18 A Yes.

19 Q I think you understand, and as we go
20 through some of these questions, I think it
21 will address what you are referring to.

22 A Okay.

23 Q B, the training if any provided by
24 the defendant to the plaintiffs, the
25 plaintiff's supervisors and/or the plaintiff's

1 OSPINO

2 Q Was there an employee time and leave
3 policy in effect prior to January 15, 2014?

4 A Yes.

5 Q Do you know what that policy prior to
6 January of 2014 was called or --

7 A It was the same name, Employee Time
8 And Leave, it's just that this year they
9 updated a couple of things within the policy.
10 You know, they made a changes to change the
11 name of the time recording system. Before it
12 was Auto Time, then City Time, so they change
13 all those words to accommodate to the new
14 system.

15 Q And City Time phased in around 2009,
16 correct?

17 A From 2009 through 2011.

18 Q And so, those terms and things were
19 updated in this January 2014 policy?

20 A I believe. You know, I cannot
21 confirm if this -- if there was another policy
22 prior to the date of the other policy prior to
23 this one, I cannot confirm that, no, but after
24 City Time, we change the name and everything.

25 Q If there was a policy, Employee Time

1 OSPINO

2 And Leave policy prior to January 15, 2014,
3 would that be something you believe the City
4 would still have a copy of or records of?

5 MR. RICKSECKER: Objection. You can
6 answer.

7 A We may, but I'm not sure because as
8 they update the policies they are changing in
9 the system, we have an intranet and they
10 change it as they update the policy, they
11 remove the old one and put the new one. We
12 may have it if there is one, I'm not sure.

13 MR. RICKSECKER: We may make a note
14 of that, I don't recall seeing an earlier
15 version of this, so if there is something like
16 that if you guys want to look into that, that
17 would be responsive to our document request.

18 Q I'd like to -- just generally, what
19 is this document?

20 A It's the time and leave policy for
21 the agency, you know, which explains exactly
22 what is expected from the employees, the
23 supervisors, you know, in reference to time
24 and leave.

25 Q Looking at this on Page 2 they are

1 OSPINO

2 A Yes.

3 Q Do you know what a straight time
4 schedule is?

5 A Yes.

6 Q What is that?

7 A Straight time is when the employee is
8 supposed to arrive a certain time and leave a
9 certain time. They don't have a period when
10 they can clock in and out.

11 Q When there is a period to clock in or
12 out, that is a flex time schedule?

13 A Flex time schedule.

14 Q Some HRA employees have straight time
15 schedules and some have flex time schedules?

16 A Correct.

17 Q How is it determined what kind of
18 schedule an employee will have?

19 MS. SAINT FORT: Objection to form.

20 A Depending on the operation and leads.
21 Usually a staff that works administrative
22 positions, you know, it can be any type of
23 employee, manager or no manager, but
24 administrative positions, they have flex
25 schedules, meaning, that they can arrive to

1 OSPINO

2 A Correct.

3 Q Actually, above the policy for
4 lateness there is the meal period section,
5 Section D, that employees are generally
6 entitled to a lunch break?

7 A Yes.

8 Q And that is for one hour?

9 A Yes.

10 Q And then for those -- for staff,
11 employees working a day shift somewhere in
12 between 12:00 and 2:00?

13 A Yes.

14 Q And is it the agency's policy to
15 automatically deduct the meal period from the
16 employee's time sheet?

17 A Yes. During the implementation,
18 whether the employees were using auto time
19 system, the employees were never mandated to
20 clock in and out to go for lunch, the agency
21 always trust that the employee won't take more
22 than one hour lunch, so they never demanded
23 from the employee to clock in and out to
24 control how long they took for lunch. So,
25 when the City Time was implemented, they

1 OSPINO

2 decided to do the same thing, you know,
3 because there was a configuration how do you
4 want do you want the employees to clock in,
5 clock out, so it was decided, you know, to
6 leave it exactly the same thing, to trust the
7 employee that they won't take more than one
8 hour.

9 Q And so, if I understand correctly, an
10 employee is not required to go into City Time
11 at say 12:30 to clock out for their meal
12 period and then clock back in at 1:30?

13 A It is not mandated.

14 Q An hour is automatically deducted
15 from that employee's time?

16 A Yes.

17 Q Just going for a little bit in this
18 document to Page 6, there is a section for
19 leave policies and the very first part is time
20 recording. Do you see that?

21 A Yes.

22 Q It says, each employee must adhere to
23 establish time and leave policies, procedures
24 and regulations infractions of the time and
25 leave policies, procedures and regulations may

1 OSPINO

2 right?

3 A Correct.

4 Q Monday of the following week?

5 A Correct.

6 Q What does certified in City Time
7 mean?

8 A When once you complete the time
9 sheets, the time entries, you know, the first
10 day of your scheduled workday, the following
11 week City Time you are supposed to certify
12 that whatever time entries that you have there
13 are correct, that you have entered all the
14 time that you have worked and then you certify
15 that and you submit your time sheet for
16 approval.

17 MR. RICKSECKER: Please mark this as
18 Plaintiffs' Exhibit 5.

19 (Time Sheet marked as Plaintiffs'
20 Exhibit 5 for Identification, as of this date.)

21 Q What has been marked as Plaintiffs'
22 Exhibit 5, do you recognize generally what
23 that document is?

24 (Exhibit handed to witness.)

25 A It is a screen shot of a time sheet.

1 OSPINO

2 Q Is the certification you were
3 referring to at the bottom of the page?

4 A Yes.

5 Q And looking at this page, is there a
6 way to tell if this employee is a flex time or
7 straight time employee?

8 A No.

9 Q You said that schedule designation
10 would be in City Time?

11 A Yes.

12 Q Where would it be found in City Time?

13 A It is on another screen.

14 Q So, going back, I am sorry, going
15 back to the employee time and leave document
16 we were looking at, if we go back to Page 19
17 and at the bottom of that page there is a
18 new -- there is a bullet point that says
19 attendance recorded by data collection device
20 web clock.

21 A Yes.

22 Q This basically says that employees
23 who are required to clock in and out on a
24 daily basis must record their time within City
25 Time using the DCD or web clock, correct?

1 OSPINO

2 A Correct.

3 Q And that it also notes that employees
4 should report malfunctioning, I guess, of the
5 DCD or the web clock to their supervisor?

6 A Correct.

7 Q Does that happen?

8 A Yes.

9 Q How frequently does that happen?

10 MS. SAINT FORT: Objection to form.

11 You can answer.

12 A Not too frequent, occasionally.

13 Q For HRA, is it maybe once a month
14 that you hear of a malfunctioning device?

15 A Maybe less.

16 MS. SAINT FORT: Objection to form.

17 A Maybe less frequently.

18 Q A few times a year?

19 A Yes.

20 Q If an employee cannot clock in using
21 the device, how do they submit their time to
22 City Time?

23 A They have to submit a time punch
24 request, you know, there is a place in City
25 Time where they click on that time punch

1 OSPINO

2 Order Number 7 and the agency procedure
3 overtime authorization compensation and
4 control; is that right?

5 A Yes.

6 Q Are all of those on the HRA intranet?

7 A Yes. That's what it says there.

8 Q Are you familiar with those
9 documents?

10 A Yes. I have seen them. Well, at
11 least the overtime authorization and control.
12 I don't remember right now the Mayoral
13 Executive Order.

14 Q And then the next paragraph it states
15 that all paid overtime must be preauthorized;
16 is that correct?

17 A Yes.

18 Q And that all overtime must be entered
19 into City Time?

20 A Yes.

21 Q Approved by the immediate supervisor?

22 A Yes.

23 Q And approved by the senior approver?

24 A Correct.

25 Q So, that is basically a two step

1 OSPINO

2 process?

3 A Yes.

4 Q It also notes that credit for
5 authorized overtime shall accrue in units of a
6 quarter of an hour; is that right?

7 A Yes.

8 Q But the City Time tracks employee's
9 work time on a minute by minute basis,
10 correct?

11 A Yes.

12 Q And then the last sentence in that
13 section in that last paragraph states that any
14 work performed before or after regularly
15 scheduled work hours must be entered and
16 approved in accordance with agency policy?

17 A Yes.

18 Q And does that mean that employees can
19 only enter an overtime request for overtime
20 that was preapproved before it was worked?

21 A This means that overtime has to be
22 preauthorized by the supervisor, overtime has
23 to be entered by the employees and overtime
24 has to be approved by the supervisor and the
25 senior approver. Now, there are employees,

1 OSPINO

2 depending on the area, I know that employees
3 are authorized to work overtime without --
4 let's put it in this way, they are preapproved
5 because of the nature of the work. I am going
6 to put example of an employee who is facing a
7 client. Those employees are told you are to
8 go if you are supposed to be leaving, let's
9 say, at seventeen hours, at 5:00, but they are
10 taking care of a client, they are supposed to
11 continue working with the client until they
12 are done. So, those type of overtime are like
13 told to them that they can do it, they can go
14 out there, they don't need to stop with the
15 client and go to the supervisor and tell the
16 supervisor can I continue working with the
17 client, no, they know that they can continue
18 and go. So, what it says here in the policy
19 applies for other type of employees, not the
20 client facing employees.

21 Q How would they know that?

22 A How they will know?

23 Q How would they know preauthorized
24 overtime, the right to preauthorized overtime?

25 A As I said, it depends on the type of

1 OSPINO

2 they -- it says employee should enter their
3 time as soon as they arrive at work to ensure
4 an accurate paycheck, correct?

5 A Yes.

6 Q Are they paid for the time that they
7 clock in?

8 MR. RICKSECKER: Objection.

9 A They are paid according to the
10 scheduled hours unless they are scheduled to
11 work pre-overtime.

12 Q It says --

13 A I am sorry, no. I wanted to say that
14 in the floor we can have hundred -- hundred
15 employees in the floor and we have two DCD
16 machines, so we ask them as soon as they are
17 coming to clock in so they won't forget. It
18 will be more difficult having to make a line
19 if all of them enter and wait for a specific
20 time to start working to start, you know,
21 clocking in and out.

22 Q It also says, in order to receive a
23 correct paycheck, staff must certify and
24 submit their City Time sheets by the close of
25 business Monday following the week worked; is

1 OSPINO

2 A Yes.

3 Q It says DCD users and ETS users.
4 What is an ETS user?

5 A Electronic Time Sheet User.

6 Q Must certify and submit their City
7 Time sheet to their supervisors for approval
8 by close of business Monday following the week
9 worked; is that correct?

10 A Yes.

11 Q That is the only way to get paid; is
12 that correct?

13 A The time sheet must be approved -- I
14 mean, must be submitted and approved.

15 Q On the next page is a page we have
16 seen similar versions in lots of these other
17 documents. This is the time sheet page with
18 the certification block; is that correct?

19 A Yes.

20 Q Do you see that there is a training
21 block that is in bold in a box that says
22 certify that your time is accurate?

23 A Yes. And it also says if there are
24 any errors on your time sheet for which you
25 receive a error message, the system will

1 OSPINO

2 to the back up approver done through City Time
3 or is it separately like through an email,
4 telephone call or something like that?

5 A No. In City Time you can do that
6 yes, of course, there have been prior
7 conversation between the supervisor and the
8 person that they are planning to leave, the
9 back up approver.

10 Q On Page 19 there are some overtime
11 basic rules?

12 A Yes.

13 Q So, all overtime needs to be
14 preauthorized by a supervisor, correct?

15 A Yes.

16 Q It says, a staff member needs to work
17 at least one hour during the week to be
18 compensated for overtime?

19 A Yes.

20 Q Why is that?

21 A That is --

22 MS. SAINT FORT: Objection to form.
23 You can answer.

24 A That is part of the City wide
25 agreement, agreements between the unions and

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G. PESTANA
IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK
NO. 16-cv-08719 (AJN)
----- x

HENRY CAMPBELL, et. al.,

Plaintiffs,

v.
CITY OF NEW YORK, NEW YORK,,
Defendant.
----- x

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK
NO. 1:16-cv-03445-RA-RLE
----- x
JEROME ADAMS, MARGARET CHERRY, MICHELLE
HACKETT, and JUAN TARONJI, et al.,

Plaintiffs,

v.
CITY OF NEW YORK, NEW YORK,
Defendant.
----- x
CONTINUED ON NEXT PAGE:

DATE: July 11, 2018
DEPONENT: Georgia Pestana

REPORTED BY: Jennifer Cruz

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G. PESTANA
IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK
NO. 16-cv-04240(AJN)
----- x

NICOLE LAWSTONE-BOWLES, et. al.,

Plaintiffs,

v.
CITY OF NEW YORK, NEW YORK,
Defendant.
----- x

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK
NO. 16-cv-8072(PKC)
----- x
MONIQUE MURRAY, et. al.,
Plaintiffs,
v.
CITY OF NEW YORK, NEW YORK,
Defendant.
----- x

Corporation Counsel
100 Church Street
New York, New York
July 11, 2018
9:59 a.m.

CONTINUED ON NEXT PAGE:
Veritext Legal Solutions
Mid-Atlantic Region
1250 Eye Street NW - Suite 350
Washington, D.C. 20005

1 G. PESTANA

2 EXAMINATION BEFORE TRIAL of DEFENDANT,
3 THE CITY OF NEW YORK, by a witness, GEORGIA
4 PESTANA, by the Respective Parties in the
5 above-entitled action, held at the above time
6 and place, taken before JENNIFER CRUZ, a
7 Professional Shorthand Reporter and Notary
8 Public of the State of New York, pursuant to
9 Notice and stipulations between Counsel.

10 * * * *

1 G. PESTANA

2 supervisory staff before" -- underlined --
3 "the work has begun."

4 A. Yes, I see that.

5 Q. Okay. So is that The City's
6 position?

7 A. The City's policy is that overtime
8 should be authorized before you work it.

9 Q. Okay. And then under 3,
10 Definitions, Fair Labor Standards Act, it
11 says: "The overtime provisions of the
12 federal Fair Labor Standards Act, FLSA,
13 require that overtime be paid at the rate of
14 time and a half of a covered employee's rate
15 of pay for each hour worked in excess of 40
16 hours in a workweek."

17 Is that The City's policy?

18 A. Yes.

19 Q. And going back up to paragraph 2
20 regarding "all overtime work is to be
21 approved by appropriate management and
22 supervisory staff before the work is begun,"
23 would you expect both managers and line staff
24 to be familiar with that policy?

25 A. Yes.

1 G. PESTANA

2 time in their time sheet as work that they
3 did. And this goes back to the distinction
4 that I made that's -- that our Collective
5 Bargaining Agreements calculate overtime
6 based on time and pay status, whereas the
7 FLSA is based on time actually worked. So
8 that is a distinction that was being made
9 here, that that time actually worked is the
10 FLSA overtime threshold as opposed to the
11 contractual rate which kicks in after 40
12 hours, or 35, in pay status which includes
13 holidays, sick leave, annual leave that
14 you're in pay status.

15 Q. Okay. And just so I'm clear, how
16 does The City determine hours that are
17 actually worked?

18 A. The employee records that, reports
19 it.

20 Q. Okay. In CityTime?

21 A. It's -- yes. CityTime assumes that
22 you worked your regularly scheduled hours
23 unless the employee tells it otherwise.

24 Q. Okay.

25 A. It's an exception paid or pay to

1 G. PESTANA

2 schedule system, we use those
3 interchangeably.

4 Q. Okay. And so what are -- what's
5 that again?

6 A. Pay to schedule, an employee will be
7 paid according to their schedule unless they
8 indicate that they didn't work their
9 schedule, they did something either less or
10 more. And that's the exception, the
11 exception paid system.

12 Q. Okay. Does that include, in
13 CityTime, what is classified as
14 non-compensable or uncompensated time?

15 MS. O'CONNOR: Objection.

16 A. I don't understand the question.

17 Q. Okay. Are you familiar with in
18 CityTime that some time is categorized as
19 either non-compensable or uncompensated?

20 A. Yes, after the time sheet is
21 submitted you mean? That some hours come up
22 as non-compensable after it's submitted.

23 Q. Okay. And are those -- is that time
24 included as hours actually worked?

25 A. No.

1 G. PESTANA

2 through it and reviewed it a little bit, but
3 is it safe to say that there's not even a
4 mention of non-compensable or uncompensated
5 time in this document?

6 MS. O'CONNOR: Objection.

7 A. I did not see those -- either of
8 those two words in here.

9 Q. Okay. But it is true that
10 uncompensated or non-compensable time is a
11 category of recorded time in CityTime?

12 A. You don't record it as
13 non-compensable. You record -- the system
14 records your attendance, and if it's outside
15 your scheduled hours and you haven't or
16 somebody else hasn't claimed overtime for it
17 for you, it gets put into a bucket of
18 non-compensable. So it's not like you're
19 recording, oh, this is my not compensable
20 time. The system is clocking in your
21 attendance and anything outside your
22 scheduled hours is going to drop into the
23 non-compensable bucket unless you say that
24 was time actually worked and I'm claiming
25 overtime or an approver claims it as overtime

1 G. PESTANA

2 for you.

3 Q. Right.

4 So basically non-compensable or
5 uncompensated -- I keep saying that because I
6 think the name changed at one point.

7 A. Yeah, but it's been non-compensable
8 for a few years now.

9 Q. So non-compensable or uncompensated
10 time is a category of time that is recorded
11 in CityTime; correct?

12 MS. O'CONNOR: Objection.

13 A. It's captured.

14 Q. Okay. And that the precise amount
15 of time that is uncompensated or
16 non-compensable is recorded, like the time?

17 A. Yeah, it's in there.

18 Q. Okay. So although that's a category
19 of time in CityTime, it is not mentioned in
20 the CityTime training?

21 MS. O'CONNOR: Objection.

22 A. It's not mentioned in this CityTime
23 training which is really the mechanics of
24 using the system.

25 Q. Okay. Do you know if anyone from

1 G. PESTANA

2 Q. Okay. There's the DCD machine,
3 which is a hand scanner; correct?

4 A. Right.

5 Q. Or they could use, I guess, the
6 CityTime program on the computer -- on their
7 computer?

8 A. Yes.

9 Q. Okay. A web clock, is that --

10 A. Yes, that's what we call it.

11 Q. And regardless of the method they
12 use, the system records the exact minute that
13 they actually clock in and out; correct?

14 A. Yes. When you stick your hand in or
15 when you log on, it captures that moment.

16 Q. Okay. Are you aware of any
17 employees that are covered by today's -- in
18 the job titles covered by today's deposition
19 that do not have CityTime at their workplace?

20 A. You mean don't have a DCD or a web
21 clock?

22 Q. Yes.

23 A. Motor vehicle operators may not.
24 I'm not sure if they go someplace before they
25 get the car.

1 G. PESTANA

2 A. I don't.

3 Q. Okay. And it's the citywide policy
4 that workers are to clock in at the beginning
5 of their work day; correct?

6 MS. O'CONNOR: Objection.

7 A. They clock in when they arrive at
8 the work site, yeah.

9 Q. Okay. And they clock back out at
10 the end of their workday?

11 MS. O'CONNOR: Objection.

12 A. Yes. Some may clock in and out for
13 lunch, as well, but they are at a minimum
14 expected to clock in when they arrive and
15 clock out when they're leaving.

16 Q. Okay. And that CityTime system in
17 some way will capture all of that time
18 between the clock in and the clock out time?

19 A. Yes. Their attendance at the work
20 site during those two clocks.

21 Q. Okay. And we've talked about this a
22 little bit, but CityTime, for the employees
23 at issue in this -- for these depositions,
24 does not treat all recorded time as work
25 time; correct?

1 G. PESTANA

2 A. All time that's captured --

3 MS. O'CONNOR: Objection.

4 THE WITNESS: All time that's
5 captured by CityTime is not treated as
6 work time, just the time within your
7 scheduled hours.

8 Q. Right.

9 And the scheduled shift time is
10 automatically treated as work time; correct?

11 A. Correct.

12 Q. Okay. And we talked a little bit
13 about this in the context of the uniformed
14 employees, but it's safe to say the system
15 could have been set up to automatically treat
16 all of the time between punches as work time;
17 correct?

18 MS. O'CONNOR: Objection.

19 A. That would have been the pay to
20 punch programming.

21 Q. Right. When implementing CityTime,
22 was there any discussion about which process
23 to use for CityTime --

24 A. Yes.

25 Q. -- whether the pay to punch or the

1 G. PESTANA

2 taking place?

3 A. Not on a mass level. Supervisors
4 are supposed to make sure their folks are
5 working when they're supposed to be working
6 or getting their overtime, but not on a let's
7 see what everybody's doing, we haven't done
8 that.

9 Q. Okay. Same with HRA?

10 A. Correct.

11 Q. Okay. And CityTime records by the
12 minute, it rounds for the seconds; is that
13 right?

14 A. No, the other way; right?

15 Q. It doesn't capture the seconds, but
16 it rounds up to the minute; is that correct?

17 A. No. I thought it does capture the
18 seconds and it rounds up to the -- sort of
19 the opposite. It captures the seconds and
20 rounds up or down to the minute.

21 Q. Right. That's what I meant.

22 A. Yeah, okay.

23 Q. And is it safe to say The City has
24 never conducted a study or analysis as to
25 whether the job titles we're here discussing

1 G. PESTANA

2 minutes late?

3 Q. Right.

4 A. CityTime will ask you what you want
5 to charge those eight minutes to.

6 Q. Like leave or --

7 A. Leave, comp time, whatever it is.
8 And it won't let you submit your time sheet
9 until you've accounted for those eight
10 minutes somehow.

11 Q. Okay. And the CityTime system
12 automatically deducts -- I want to make sure
13 I get this right. Start over.

14 The CityTime system automatically
15 deducts an hour of pay for the meal period?

16 MS. O'CONNOR: Objection.

17 A. For most titles. And the titles
18 that are at issue here, I believe that's
19 true.

20 Q. Okay. And I think with the
21 exception of the peace officers and sergeants
22 I believe have a 30-minute meal period, but
23 it would similarly deduct 30 minutes instead
24 of an hour; correct?

25 A. Again, that's the pay to schedule,

1 G. PESTANA

2 A. Know that they are actually working
3 I guess is -- the word actually goes in that
4 sentence.

5 Q. Okay. And at the end of the week
6 the employees are required to click a button
7 next to the certification language in order
8 to get paid for each week; correct?

9 A. There's a check box, yes, next to
10 certification language before they hit
11 submit.

12 Q. Okay. And if they do not click it,
13 they cannot be paid; is that correct?

14 MS. O'CONNOR: Objection.

15 A. They can't submit the time sheet and
16 then they can't be paid unless the time sheet
17 is submitted because then it can't get
18 approved and then it can't get into the
19 system.

20 Q. Okay. Exhibit 19, can I have you
21 take a look at that?

22 A. Sure, mm-hum.

23 Q. This is the training --

24 A. The user course.

25 Q. Yes, the user course. If I can have